

H. Agriculture

General—Ability of Oregon’s Agricultural Programs for Meeting CZARA requirements

Comment: Some commenters noted that they did not believe Oregon had satisfied the CZARA requirements for Agriculture and the conditions related to the agriculture management measures that NOAA and EPA placed on Oregon’s Coastal Nonpoint Program. Various points were made about the ineffectiveness of existing enforcement and monitoring efforts as well as the inadequate management approaches and programs the state relies on to meet the CZARA requirements (see specific comments below for detailed examples). One group contended that Oregon needs effective monitoring to determine program progress and better data and science to inform regulators before enacting any new agriculture regulations.

Other commenters felt strongly that the state had satisfied the CZARA agriculture management measures and the conditions placed on its program related to agriculture (see specific comments below for detailed examples). They noted that finding otherwise would be unreasonable and would not be in line with CZARA requirements. Some commenters also noted finding that the state has not submitted an approvable program for agriculture would punish of the agriculture community.

Source:

Response:

General –Effectiveness of the Agriculture Water Quality Management Area Program and Plans for Meeting the CZARA Management Measures

Comment: Several commenters expressed concerns with the effectiveness of the state’s Agriculture Water Quality Management Area (AWQMA) Program for addressing polluted runoff. They did not believe the program enabled Oregon to meet CZARA requirements. However, other commenters were supportive of the program and thought it did enable the state to meet its CZARA agriculture requirements.

Specifically, commenters that were concerned about the adequacy of the AWQMA Program, noted that current agricultural water quality management area rules are insufficient to meet water quality standards and TMDL load allocations. They also stated that there is inadequate enforcement of the rules and lack of an implementation plan to ensure that agricultural landowners’ voluntary actions occur. Oregon Department of Agriculture (ODA) largely relies on voluntary actions by landowners to adhere to the AWQMA rules and meet water quality standards. For example, one commenter, who is an agriculture landowner and a member of an Agricultural Water Quality Management Area (AWQMA) local advisory committee, discussed how the committee was informed that the AWQMA plan would be complaint driven and compliance was voluntary. The commenter questioned the effectiveness of this approach.

Other commenters that felt Oregon had satisfied its CZARA agriculture management measure requirements and conditions through the AWQMA Program. They noted that the coastal AWQMA plans directly reference the 6217(g) agriculture management measures and that ODA has the authority to require management measures that meet CZARA requirements or impose additional measures if

necessary. They also believed the AWQMA plans and rules had sufficient goals and policies for improving water quality within coastal watersheds.

These commenters also described how ranchers and farmers have worked hard to meet or exceed water quality standards by working with the state to develop Agricultural Water Quality Management Plans, which set watershed goals and investment priority areas that enhance water quality. They added that this planning also requires ODA to implement site-specific and site-appropriate controls, which are “designed to address actual water quality issues with economically achievable measures”.

Various groups represented by one comment letter contended that the Agricultural Water Quality Management Plans and rules meet and exceed the requirements of CZARA. They pointed out that agricultural land use represents approximately five percent of land uses within the coastal zone and the primary agricultural land use of that five percent is pasture or hay agriculture resulting in lesser impacts to water quality. They argued that most agriculture landowners comply with existing water quality management rules and meet relevant CZARA requirements and there is an existing process in place to address noncompliance instances. They also contended that CZARA requires the State and its agencies to use its authority to enforce a water quality program that meet or exceed 16 U.S.C. 1455b requirements and that ODA has demonstrated it has used its authority to enforce AWQMP rules where necessary and appropriate.

Commenters pointed out that the Oregon Department of Agriculture already has a process in place where it identifies agriculture activities that prevent achievement of water quality standards and then works with farmers to modify, reduce or remove those activities from operations voluntarily. One commenter, on behalf of others, reiterated this point - that ODA has enforcement authority to ensure compliance with water quality requirements but first, ODA will work directly with landowners who are noncompliant to make necessary land use changes voluntarily before turning to enforcement. Commenters highlighted the existing review and monitoring processes ODA has enacted to track program “implementation and effectiveness”.

Source: 57-CC, 57-EE, 64-F, 65-B, 65-C, 65-D, 65-E, 65-F, 66-F, 68-F, 71-G, 71-K, 72-A, 73-A, 78-H, 78-I,

Response I.1:

General—Inadequacy of Oregon Water Resources Department’s (OWRD) Water Use Basin Program for Meeting Irrigation Management Measure

Comment: Another group commented that the Oregon Water Resources Department’s (OWRD’s) Water Use Basin Program is inadequate for meeting CZARA requirements for agriculture. They suggested that NOAA and EPA were incorrect when finding that OWRD’s Water Use Basin Program supports the irrigation measure and reiterated that Oregon’s Basin Programs do not ensure that water quality and habitat for sensitive and endangered species will not be impaired. They urged EPA and NOAA to look closely at the deficiencies of the Basin Programs before attributing any water quality or fish habitat protection value to them as a measure in support of Oregon’s agricultural conditions. They added that Oregon’s rules provide no assurance that water use will be adequately limited to maintain minimum flows and Basin Programs fail in practice to protect minimum perennial streamflows and instream rights held by OWRD for the protection of aquatic wildlife and water quality. They concluded that EPA should disapprove Oregon’s agricultural measures and acknowledged the lack of protection offered by Oregon’s

Water Use Basin Programs for preservation of aquatic life and designated uses in the agencies' final determination.

Source:

Response I.2:

Agriculture-Buffers

Comment I.3: Various commenters noted the need for adequate buffers along both fish and non-fish bearing streams to protect water quality, including cold water temperatures needed for the recovery and health of native salmon. It was noted that Oregon lacks necessary management measures for riparian protection to help meet water quality standards and to protect coho salmon, amphibians, and drinking water. Another commenter noted too that Oregon has failed at controlling polluted runoff caused by erosion and sedimentation from agricultural lands and destruction of riparian areas by livestock. On the other hand, it was pointed out that farmers and ranchers have installed many miles of piping for livestock watering, and have planted and fenced many miles of stream banks.

One commenter spoke about her experience serving as an advisory member to an agricultural area advisory committee during its local area planning in 2009. She explained that when specific buffer proposals were presented to the committee, "All of the specific proposals for riparian protection were rejected by the committee, despite their knowledge of specific water quality problems in the basin created or exacerbated by inadequate riparian vegetation, including stream temperature problems and bacterial contamination from livestock".

Source: 44-F, 49-G, 55-E, 72-A, 81-A, 83-E, 83-F, 83-L

Response I.3:

Agriculture-Pesticides

Comment I.4: Commenters expressed their concerns with the amounts of pesticides being applied and lack of management measures in place to address pesticide use over agricultural lands. One commenter emphasized the importance of adequately managing pesticide spraying to protect human health from exposure. The commenter referenced a local case where sudden poor health suffered by residents appeared to be related to their exposure to pesticide sprays. Commenters reiterated that no pesticide management measures are being implemented over Oregon's agricultural lands, and the Oregon Department of Agriculture's pesticide use programs fail to control polluted runoff from pesticide use on agriculture lands.

One commenter noted that NOAA and EPA's rationale for agriculture does not make any findings about the adequacy of Oregon's program to protect water quality and designated uses from pesticides applied to agricultural lands. They noted that Oregon's management measures for pesticides are not adequate to meet water quality standards or support designated uses and additional management measures to address pesticides are needed. Another commenter and member of an Agricultural Water Quality Management Area local advisory committee questioned how the committee was advised to not consider pesticides as a pollutant.

One group commented that run off from all sources including roadside herbicide use, agricultural and forestry operations has been evident during monitoring programs, adding that runoff occurs and existing rules do not effectively protect water quality.

On the contrary, another commenter pointed to the Pesticide Stewardship Programs, CAFO and AQWMP that are already in place to address any related pesticide issues.

Source: 28-D, 57-GG, 57-HH, 59-A, 81-B, 83-E, 83-M

Response I.4:

Agriculture-- Extent of Nonpoint Source Pollution from Agriculture

Comment: Several commenters noted that NOAA and EPA did not support their claim that nonpoint source problems from agriculture are widespread. Commenters also requested that the agencies' references to the coho salmon listings and recovery plan findings as they relate to agriculture impacts to water quality be removed because they are not supported by science or data. They noted that Oregon has already developed water quality standards designed to protect designated uses (including coho salmon and other endangered or threatened fish species) and this program adequately addresses activities to ensure protection of these species. They contended that most ambient water quality monitoring reports indicate "fair to excellent water quality" and sites with poor conditions are not due to agricultural activities.

Agriculture- Need for Additional Management Measures

Comment I.5: Multiple commenters noted that Oregon needed to implement additional management measures for Agriculture to meet water quality standards and to protect designated uses. Specifically, they noted that in most cases, allowable temperature increases for nonpoint source pollutants is zero, so it is very likely that agriculture activities are contributing to violations of temperature standards. In addition, none of the Agriculture Water Quality Management Plan Basin rules incorporate additional management measures needed to meet the zero load allocations established in the existing temperature TMDLs for Oregon coastal watersheds. One commenter suggested various management measures to protect water quality including requiring riparian buffers on commercial agricultural lands, fencing streams and riparian areas to reduce impacts by livestock, and promoting establishment of riparian vegetation to name a few.

On the other hand, several commenters asserted that additional management measures for agriculture were not needed. The commenters noted that EPA and NOAA have not provided specific data or information that would support the need for additional management measures, many of which may be "economically achievable". They noted that CZARA does not have specific requirements for riparian buffers on agriculture land, restoration of lands to pre-agricultural uses, additional management measures that do not result in reduced nonpoint source pollution. In addition, they note that, per the CZARA statute, all management measures must be "economically achievable."

Source: 23-B, 44-C, 47-B, 56-M, 57-CC, 57-EE, 60-E

Response I.5:

Agriculture-Addressing Legacy Agriculture Issues

Comment 1.6: One commenter expressed their concern about legacy agriculture areas where riparian buffers may have regrown but do not contain sufficient protection or native species to sufficiently improve the overall degradation of Oregon streams habitat and water quality (i.e., buffers of blackberries). They believed that Oregon needed to adopt buffer requirements to address this legacy issue.

Another commenter, representing various groups, discussed how NOAA and EPA assert that AWQMA planning and enforcement do not address “legacy” issues created by agriculture activities that are no longer occurring. The commenter stated that neither CZARA nor the 6217(g) guidance define legacy issues or require that state coastal nonpoint programs address legacy issues. They noted that despite this, the Oregon Watershed Enhancement Board still invests money to address legacy agricultural issues. They added that Oregon has a process in place to identify opportunities to enhance and restore watersheds, including “legacy” issues, “through the Oregon Plan for Salmon and Watersheds, the Oregon Aquatic Habitat Restoration and Enhancement Guide, OWEB riparian restoration projects, Area Plans, and many other federal, public and private partnerships. These programs are successful due to the voluntary efforts of many Oregon agriculture landowners”.

Source: 71-T

Response 1.6

Hydromodification

Comment 1.8: A couple of commenters discussed the negative impacts of hydromodification, noting the effects of dams on water quality and habitat and impacts from channel modification. They declared that Oregon has failed to control polluted runoff from eroding stream banks and shorelines and it does not have programs in place to protect and restore channel conditions from modification.

Source: 46-H, 49-F

Response 1.8:

Wetland

Comment 1.9: One commenter noted that Oregon does not have programs in place to protect and restore riparian areas needed to maintain cool stream temperatures and habitat or to protect and restore wetlands.

Source: 49-F

Response 1.9:

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Source: _____

Response:

Comment [AC1]: Didn't have a chance to match up sources with the new subset of comments...still to come till to come to match up sources with the new subset of comments.ht subset of comments. Let's to address this legacy issueeve

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Comment [AC2]: Need to double check sources for comment.

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Comment [AC3]: Double check sources

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Source: 71-T

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Source: 46-H, 49-F

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Source: 49-F

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